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Olivier Favorel

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EXAMINER

VETTER, DANIEL

ART UNIT

PAPER NUMBER

3628

NOTIFICATION DATE

DELIVERY MODE

07/20/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/520,115	<b>Applicant(s)</b> FAVOREL ET AL.	
	<b>Examiner</b> DANIEL VETTER	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 21 and 23-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21 and 23-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of the Claims***

1. Claims 21-29 were previously pending. Claim 21 was amended and claim 22 was canceled in the reply filed July 7, 2010. Claims 21 and 23-29 are currently pending.

### ***Response to Arguments***

2. Applicant's arguments filed with respect to Boies and the allocation steps have been fully considered but they are not persuasive. As a threshold matter, the requirements of the newly added "reassignment" step are unclear, and an embodiment that requires mandatory reassignment of all passengers (as argued in the supplied Remarks, pages 6-7) is without support in the Specification as filed (see rejections under § 112 below). Applicant argues that Boies does not teach a global reassignment "since Boies states that only passenger C is considered for the reassignment step." Remarks, page 6. However, Boies plainly discloses that multiple passengers are considered for a move with each new passenger request. "As subsequent requests are received, the central controller 100 reassigns passengers to different seats that satisfy their seating requests and satisfy the incoming requests." Boies, ¶ 0028. Thus, Examiner respectfully disagrees and maintains that Boies sufficiently teaches an embodiment wherein a global reallocation check is iterated upon changes to the manifest in order to give customers a seat that best fits their requests, therefore meeting the claimed requirement of reallocation as best understood in light of the disclosure. Accordingly, the rejections made under § 103(a) are maintained.

3. Applicant's arguments with respect to the satisfaction value and Nakano have been fully considered but are moot in view of the new grounds of rejection.

### ***Claim Objections***

4. Claim 21 is objected to because of the following informalities: "cancellation of [a] seat" appears to be a typographical error. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 21 and 23-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

7. Amended claim 21 requires "upon each new reservation or cancellation of seat, reassignment of seats to all the customers by allocation, with the allocation server, to each customer, by decreasing order of level of priority, of the available seat having the maximum satisfaction value." No form of the word "reassign" is present in the disclosure. It is not sufficiently clear if this limitation requires changing the seat assignment of all passengers each time there is a new reservation or cancellation, or merely that available seats, if any, are reallocated (see rejection under § 112, second paragraph below). The relied upon paragraphs only provide for initial assignment of available seats (¶¶ 0013-17 of the published application), and subsequent repetition of the steps if there is an available seat. "Upon each repetition of the process according to the invention, these available seats can be reallocated according to the development of the criteria used by the process of the invention." ¶ 0028 of the published application (emphasis added). In other words, inasmuch as the claim requires it, there is no support for requiring reassignment of all passengers upon each reservation or cancellation. Only available seats, if any, are reallocated. Accordingly, the written description does not disclose "reassignment of seats to all the customers" as required by amended claim 21 and argued in the accompanying Remarks. Claims 23-29 inherit the above deficiency by virtue of their dependency on claim 21 and, as such, are rejected for the same reason.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 21 and 23-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Amended claim 21 requires "upon each new reservation or cancellation of seat, reassignment of seats to all the customers by allocation, with the allocation server, to each customer, by decreasing order of level of priority, of the available seat having the maximum satisfaction value." This limitation is unclear. If a customer is already assigned the seat with the maximum satisfaction value, and the new reservation or cancellation changes neither his priority nor the maximum value seat, the claim requires that he is nonetheless subsequently reassigned a new seat. In this case, the particular customer is no longer assigned the seat with the maximum satisfaction value. In other words, it appears that in certain cases these two requirements of the claim are mutually exclusive. Accordingly, as the metes and bounds of the claim cannot be determined, the claim does not properly apprise the public as to what would constitute infringement. For the purposes of examination in view of the prior art below, Examiner is interpreting this limitation to require that only available seats, if any, are reallocated; and that it is possible for a customer to remain assigned the same seat after each iteration.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claims 21 and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boies, et al., U.S. Pat. Pub. No. 2002/0082878 (Reference A of the PTO-892 part of paper no. 20080513) in view of Seth, et al., U.S. Pat. No. 7,065,499 (Reference A of the attached PTO-892) and Walker, et al., U.S. Pat. No. 6,112,185 (Reference B of the PTO-892 part of paper no. 20080513).

13. As per claim 21, Boies teaches a method for the allocation of seats to customers, usable with a computerized reservation system, comprising: assignment, in a database, to each customer, of data relative to placement criteria (§ 0038); determination of a satisfaction value of the customers for each seat as a function of agreement with the placement criteria (§ 0046), assignment, in a database, to each customer, of a priority level (§ 0038), assignment of seats to all the customers by allocation with an allocation server, to each customer, of the available seat having the maximum satisfaction value (§ 0046), upon each new reservation or cancellation of a seat, reassignment of seats to all the customers by allocation, with the allocation server, to each customer of the available seat having the maximum satisfaction value (§§ 0028, 43).

Boies does not teach that the determination is by a processor, assignment to each placement criterion, of an attribute weight, and that the satisfaction value is a particular numerical amount resulting from a specific mathematical operation, the satisfaction value being a percentage of satisfaction, a maximum satisfaction being 100 percent; which are taught by Seth (col. 8, line 58 – col. 9, line 11; col. 12, lines 25-39). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above features for the same reason they are useful in Seth—namely, to facilitate a customer satisfaction analysis among multiple choices. Additionally, this is merely a combination of old and already-known elements. In the combination each element performs the same function as it did separately, and one skilled in the art would have recognized that the combination could be implemented through routine engineering and that the results of the combination were predictable.

Moreover, making the determination by a processor rather than a person is merely the automation of an already-known step. Broadly providing an automatic means to accomplish a known activity is not sufficient to distinguish a claimed invention

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over the prior art. *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). In this case, performing the determination automatically using a processor would have been an obvious expedient that could have been obtained through routine engineering producing predictable results. Examiner notes that while the embodiment set forth as an example in Seth does not specifically deal with a seat for travel, one skilled in the art would have recognized that the weighting preferences methodology and analysis used in Seth are easily extensible for other products and services that have discernable attributes such as an airline seat.

Boies does not explicitly teach that the allocation steps are done by decreasing order of level of priority, which is taught by Walker (col. 6, lines 6-11). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Walker because this is merely a combination of old and already-known elements in the travel reservations industry. In the combination each element performs the same function as it did separately, and one skilled in the art would have recognized that the combination could be implemented through routine engineering and that the results of the combination were predictable.

14. As per claim 24, Boies in view of Seth and Walker teaches the method of claim 21 as described above. Boies further teaches there is assigned to each seat at least one attribute indicating inclusion in group of available seats, for the definition of the seats available for allocation (§ 0021).

15. As per claim 25, Boies in view of Seth and Walker teaches method of claim 24 as described above. Boies further teaches that there is excluded from the group of available seats, seats whose reservation is confirmed by the customer (§ 0009).

16. As per claim 26, Boies in view of Seth and Walker teaches method of claim 25 as described above. Boies further teaches for customers whose seat has a confirmed reservation, there is carried out a search procedure for a possible better seat by the steps of allocation (§ 0046).

17. As per claim 27, Boies in view of Seth and Walker teaches method of claim 21 as described above. Boies further teaches the placement criteria comprise data as to zone or location of the seats desired by the customer (§ 0042).

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18. As per claim 28, Boies in view of Seth and Walker teaches method of claim 21 as described above. Boies further teaches the placement criteria comprise an adjacency criterion of the customer to at least one other customer (§ 0039).

19. As per claim 29, Boies in view of Seth and Walker teaches method of claim 21 as described above. Boies further teaches there is assigned to each placement criterion an attribute defining it either as mandatory or as preferred (§§ 0041-43).

20. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boies, et al. in view of Seth, et al. and Walker, et al. as applied to claim 21 above, further in view of Official Notice considered admitted prior art.

21. As per claim 23, Boies in view of Seth and Walker teaches the method of claim 21 as described above. Boies in view of Seth and Walker does not teach upon all the available seats being assigned, placing remaining customers on a waiting list. Official Notice was previously taken and not challenged that waiting lists are old and well-known in the reservations art. This finding is considered admitted prior art. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above finding of Official Notice, for example, so that a list of potential passengers can be easily accessed in the event that another seat becomes available. Moreover, this is merely a combination of old and already-known elements. In the combination each element performs the same function as it did separately, and one skilled in the art would have recognized that the combination could be implemented through routine engineering and that the results of the combination were predictable.

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Vig, U.S. Pat. No. 6,038,554 (Reference B of the attached PTO-892) teaches a computer-assisted valuing system for discovering both an entity's actual current societal monetary value and its contemporary monetary worth specifically to the inquiring individual person, group or corporation, providing a user with such target entity's retail and wholesale prices along with its true worth and specific value to the



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explorer. Arora, et al., U.S. Pat. Pub. No. 2002/0013735 (Reference C of the attached PTO-892) teaches a digital system for matching desired characteristics with item attributes. The system provides for weighting of variable values to be matched, and substitution of variables or values.

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL VETTER whose telephone number is (571)270-1366. The examiner can normally be reached on Monday - Thursday 9am - 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DPV/

/JOHN W HAYES/

Supervisory Patent Examiner, Art Unit 3628